

REMARKS

Claims 1-29 are pending. Of those, claims 1, 13, 20-24 and 26 are independent.

Applicant thanks the Examiner for the cooperation extended in the form of the telephone interview conducted on March 8, 2004 with one of Applicant's representatives. The interview included a discussion of the following: an example context to which at least one embodiment of the present invention is well suited, namely the passing of a script via the internet to an editor/interpreter of such scripts residing on a server; some alternative language for the claimed phrase "text representing an executable file;" and lines 54-63 of column 4 of the Cooper patent, which Applicant's representative explained as follows. This passage merely discloses the passing of the text or a phrase (corresponding to a mouse-clicked radio button) to a JavaScript program, which then calls a Java program and passes along the text/phrase. The Java program constructs a relationship query from the text/phrase passed thereto by the JavaScript program. But this is not comparable to the text or phrase from the radio buttons being interpreted as if it were a script by an interpreter or compiled as if it were a program by a compiler.

Rejections based upon Cooper Patent

Beginning on page 3 of the Office Action, the Examiner has maintained the rejection of various claims under §102(e) as being anticipated by U.S. Patent No. 6,101,503 to Cooper et al. (the "Cooper patent"), or under §103(a) as being anticipated by a combination of references each of which has the Cooper patent as the primary reference. Applicant traverses.

The Cooper patent is directed toward marking-up a document to exhibit highlighted search terms that are active in the sense of being mouse-clickable to obtain some action, the document having been included on a hit list assembled by a search engine. The Cooper patent discloses that data objects (such as HTML radio buttons) corresponding to the search terms are inserted

at the top of the document. Someone viewing the document can click one or more of the radio buttons, which causes the text of the search term corresponding to that button to be passed to a JavaScript program that, in turn, calls a Java program. The Java program then makes a relationship query to a database on the server based upon the text. See, e.g., lines 51-60 of column 4, which is reprinted as follows (underlined emphasis added):

The invention then inserts form objects such as HTML radio buttons (335) at the top of the document, each labeled with one of the top-ranking terms or names in the document. While the insertion of form objects is well known, e.g., in HTML, JavaScript and other web page languages, the programming methods called from these form objects is new. These form objects are coded so that when the user clicks on one, the text of that term or phrase is passed to a JavaScript program. The JavaScript program, in turn, calls a Java program which makes a relationship query (345) to the relations index on the server.

The Java program that makes the relationship query based upon the text is not an interpreter that operates upon a script nor is it a compiler that operates upon a program. In other words, the text passed to the Java program is not a set of commands representing a script or program.

In computer programming, a script is a program or sequence instructions that is interpreted or carried out by another program rather than directly by the computer processor, as in the case with a compiled program.¹ As contrasted with a compiled program, each instruction in a script is handled by an intervening piece of software (namely, the interpreter) rather than being handled directly by the basic instruction processor of the computer.² A program is source code written typically by humans.³ Operation upon a

¹ See the definition of "Script" provided by the website [www.whatis.com](http://searchvb.techtarget.com/sDefinition/0,,sid8_gci212948,00.html) http://searchvb.techtarget.com/sDefinition/0,,sid8_gci212948,00.html.

² See the definition of "Script" provided by the website [www.whatis.com](http://searchvb.techtarget.com/sDefinition/0,,sid8_gci212948,00.html) http://searchvb.techtarget.com/sDefinition/0,,sid8_gci212948,00.html.

³ See the definition of "program" provided by the free on-line dictionary of computing (FOLDOC), <http://foldoc.doc.ic.ac.uk/foldoc/foldoc.cgi?program>.

program by the compiler or assembler produces executable machine code.⁴ There are, however, computer languages that fall between being interpreted or compiled, e.g., Lisp, Forth, UCSD Pascal, Perl, Java, etc.⁵ Source code written in such language that are neither purely interpretable nor purely compilable nevertheless defines a set of commands representing a script or program.

Independent claim 1, in part, recites that the server receives the request that includes a set of commands representing a script or program. Applicant is willing to assume for the sake of argument that the Cooper patent discloses a server that receives a request that includes a relationship query intended for a database. But a request that includes a relationship query cannot reasonably be interpreted as a request that includes a set of commands representing a script or program. As such, the recitation in claim 1 of "the server receiving a request, including said set, from said web browser," the antecedent basis for "said set" being a set of commands representing a script or program, represents a distinction over the Cooper patent.

Independent claim 13 recites a similar distinction over the Cooper patent, namely "the web browser making a request to said set," the antecedent basis for "said set" being a set of commands representing a script or program. Claims 2, 7 and 10, respectively, depend at least indirectly from claim 1 and inherit the distinction noted above, by dependency. Claims 14, 15 and 17 depend from claim 13, respectively, and inherit the distinction noted above by dependency, respectively.

Similarly, by dependency, claims 20-23 respectively inherit the distinction over the Cooper patent noted above.

Thus, the §102(e)⁶ rejection of claims 1, 2, 7, 10, 13-15, 17, 20-23 and 28-29 is improper and Applicant requests that it be withdrawn.

⁴ See the definition of "program" provided by the free on-line dictionary of computing (FOLDOC), <http://foldoc.doc.ic.ac.uk/foldoc/foldoc.cgi?program>.

⁵ See the definition of "Ousterhout's Dichotomy" provided by the free on-line dictionary of computing (FOLDOC), <http://foldoc.doc.ic.ac.uk/foldoc/foldoc.cgi?Ousterhout's+dichotomy>.

⁶ The rejection begins on page 3 of the Office Action.

Claims 3-6, 8-9, 11-12, 16 and 18-19 are rejected⁷ over combinations of references each of which includes the Cooper patent as the primary reference. None of the applied references has been, or could be, used as a teaching of the distinction over the Cooper patent noted above. As such, that distinction also distinguishes over the various secondary references. Accordingly, the various §103 rejections of claims 3-6, 8-9, 11-12, 16 and 18-19 over combinations of references each of which are based upon the Cooper patent, respectively, are improper and Applicant requests that they be withdrawn.

Rejections based upon Potts Patent

Beginning on page 6 of the Office Action, claims are rejected either under §102(e) as being anticipated by the U.S. Patent No. 6,516,339 to Potts, Jr. et al. (the "Potts patent") or under §103(a) over a combination of references for which the Potts patent is the primary reference. Applicant traverses.

The Examiner has drawn Applicant's attention to lines 29-33 of column 1 of the Potts patent, of which lines 29-33 are reprinted below:

An example of a client/server computing model is the World Wide Web (Web) on the Internet. A Web browser resident on a client computer communicates with a Web server which typically queries back-end systems and returns the results of the queries back to the client.

Nothing about the Potts patent discloses examples, or more generally the nature, of the back-end systems. Nor does anything about the Potts patent disclose the nature of the query made by the server to the back-end systems.

Independent claim 24, in part, recites a method of at least one of testing and manipulating parameters of a separate system connected to the server. Applicant is willing to assume for the sake of argument that a back-end system according to the Potts patent could correspond to the separate system recited in claim 24. But Applicant disagrees that the query disclosed by the Potts patent of the back-end system causes the back-end system to be tested or

⁷ Beginning at page 8 of the Office Action.

manipulated to change operation thereof. This is simply not present in the literal disclosure of the Potts patent.

Under U.S. patent law, an aspect not literally disclosed by a reference is considered to be inherently present if the difference between what is literally disclosed and what is claimed necessarily follows from that which is literally disclosed by the reference. Here, it is unreasonable to assert that at least one of testing and manipulating parameters of the back-end system necessarily follows from the statement: "Web server which typically queries back-end systems and returns the results of the queries back to the client." To the extent that the Examiner disagrees, Applicant challenges the Examiner to present reasoning explaining how the claimed aspect of "causing said separate system to be tested or manipulated to change operation thereof" necessarily follows from what is literally disclosed by the Potts patent. To reiterate, it does not necessarily flow.

The Examiner has interpreted "manipulation" as including the reception of a request and consequently executing a file, which in turn produces result generated by the execution of the file. This interpretation of manipulation is believed by the Examiner to be disclosed by the Potts patent. By this reply, claim 24 has been clarified to recite that the separate system is caused to be manipulated to change operation thereof. Manipulation that changes operation of the system being manipulated should not be included within the Examiner's interpretation of the term manipulation *per se*.

Independent claim 26 recites a correspondingly similar method of at least one of testing and manipulating parameters of the separate system.

In view of the foregoing discussion, the §102(e) rejection⁸ of claims 24 and 26 over the Potts patent is improper and Applicant requests that it be withdrawn.

⁸ Beginning on page six of the Office Action

Beginning on page 16 of the Office Action, claims 25 and 27 are rejected under §103(a)⁹ as being obvious over the Potts patent in view of U.S. Patent No. 6,269,254 to Mathis (the "Mathis patent"). Applicant traverses.

The Mathis patent has not been, nor could it be, cited as a disclosure of the distinction over the Potts patent noted above. As such, the §103 rejection of claims 25-27 based upon the combination of the Potts and Mathis patents is improper and Applicant requests that it be withdrawn.

CONCLUSION


The issues in the case were considered to be resolved. Accordingly, Applicant again requests a Notice of Allowability.

Person to Contact

In the event that any matters remain at issue in the application, the Examiners are invited to contact the undersigned at (703) 668-8000 in the Northern Virginia area, for the purpose of a telephonic interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

By: 
Thomas S. Auchterlonie
Reg. No. 37,275

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 8910
Reston, VA 20195
(703) 668-8000
TSA:dg

⁹ Though item 13 literally recites "§102(e)," Applicant has inferred that this is a typographical error and that the Examiner intended to recite §103(a).